ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER F2024-18

June 27, 2024

WORKERS' COMPENSATION BOARD

Case File Number 015946

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Summary: The Complainant is a police officer and his employer is a municipal police service. The Workers' Compensation Board (the Public Body) accepted his claim for post-traumatic stress disorder (PTSD).

The Public Body arranged for the Complainant to attend a psychiatrist for an independent medical examination (IME).

The Public Body provided a copy of the IME report to a general practitioner and a psychologist whom it knew to have treated the Complainant, and to his employer.

The Public Body requested that the Complainant attend an additional IME. The Complainant declined. The Public Body asked a medical consultant of the Public Body to review the Complainant's file. The memo included a summary of the Complainant's medical history and the findings in the IME report. The Public Body then provided a copy of the memo to the Complainant's employer.

The Complainant complained to the Commissioner regarding the disclosures of the IME report to the general practitioner, the psychologist, and his employer and the disclosure of the medical consultant's memo to his employer.

The Public Body conceded that it disclosed the Complainant's personal information in the circumstances alleged but argued that it had statutory authority to disclose the information.

The Adjudicator found that the Public Body had contravened Part 2 of the FOIP Act when it disclosed the IME report and the medical consultant's memo to the Complainant's employer. The Adjudicator also found that the disclosure of the IME report to the general practitioner and the psychologist contravened Part 2 of the FOIP Act. She also found that the Public Body had disclosed more personal information than was reasonably necessary to meet its stated purposes in disclosing the information. She ordered the Public Body to cease disclosing the Complainant's personal information in contravention of the FOIP Act.

Statutes Cited: AB: *Freedom of Information and Protection of Privacy Act,* R.S.A. 2000, c. F-25, ss. 1, 17, 40, 41, 72; *Health Information Act,* R.S.A. 2000, c H-5, ss. 20; *Workers' Compensation Act*, R.S.A. 2000, c. W-15 ss. 6, 34, 35, 38, 39, 44, 147, 152; Freedom of Information and Protection of Privacy Regulation, Alberta Regulation 186/2008, s. 7; *Public Service Act*, RSA 2000, c P-42, s. 20

Authorities Cited: AB: Orders F2006-026, F2008-029, F2019-23

Cases Cited: In *Bell ExpressVu Limited Partnership v. Rex*, 2002 SCC 42 (CanLII), [2002] 2 SCR 559; *McInerney v. McDonald*, 1992 CanLII 57 (SCC), [1992] 2 SCR 138; *Sherman Estate v. Donovan*, 2021 SCC 25 (CanLII), [2021] 2 SCR 75

I. BACKGROUND

[para 1] The Complainant is a police officer and his employer is a municipal police service. The Workers' Compensation Board (the Public Body) accepted his claim for post-traumatic stress disorder (PTSD).

[para 2] On December 4, 2017, the Public Body arranged for the Complainant to attend a psychiatrist for an independent medical examination. According to the background provided by the Public Body, the purpose of the examination was to assess the permanency of the Complainant's work restrictions and to determine whether he had plateaued with treatment.

[para 3] On December 8, 2017, the Public Body provided a copy of the IME report to a general practitioner whom it knew to have treated the Complainant.

[para 4] On February 12, 2018, the Public Body provided a copy of the IME report to the Complainant's employer and to a psychologist who was providing treatment to the Complainant.

[para 5] The Complainant declined to participate in another IME as the Public Body would not agree to limit the sharing of personal information as the Complainant requested.

[para 6] The Public Body had a medical consultant conduct a file review and prepare a memo regarding the permanence of the Complainant's disability and his work

restrictions. The medical consultant's memo, dated May 24, 2019, contains a summary of the content of medical reporting regarding the Complainant as well as the findings and recommendations from the IME report of December 2017. The consultant acknowledged that the Complainant's status could have changed since he was seen by the psychiatrist who prepared the IME report in December of 2017, but that the reporting available to the consultant indicated the Complainant could not perform his date of accident employment duties although it was possible his condition could improve or had improved at the date of writing. The medical consultant prefaced the report with the following statements:

> The claim owner has asked me to review this file.
>
> My role as a medical consultant is to help inform the claim owner on the medical aspects of a claim. This may pertain to diagnosis and treatment of the medical issues, including commenting on evidence-based knowledge of causation of injury and disease. WCB claim owners are responsible for determining a worker's entitlement to benefits and services based on legislation and policy. The claim owner will decide on how my review is used in the context of all the information available on the claim.

The Public Body provided the foregoing memo to the Complainant's employer at the employer's request.

[para 7] On June 27, 2019, the Public Body wrote the Complainant and acknowledged that the IME report had been provided to the employer contrary to its usual practice:

> The disclosure was done outside of the WCB's established procedure for disclosure of psychological reporting to the employer, which provides that all requests for documents containing psychological or psychiatric information must be referred to WCB's Access to Information (ATI) department.
>
> When requests for psychiatric/psychological IMI reports are made, ATI ensures that employers will only receive the opening comments and final comments. In your case, page 1 and pages 21-28 would have been provided to the employer (starting with "Discussion" on p. 21). Pages 2 to 20 would have been severed from the report, had the proper process been followed.

[para 8] The Complainant complained to the Commissioner about the disclosures. He stated:

> I wish to file a review of the Workers Compensation Board Alberta Privacy complaint review. In their reply WCB claims a signed consent form dated 04 December 2017 with no names or information filled in as to treating Dr is consent to release an Independent medical exam to both my former Family Dr and Psychologist. It was my understanding that this consent form was to authorize the IME and to allow its release to WCB. It was not informed consent to release this report to the individuals listed above.
>
> Furthermore WCB in error released a full copy of this IME to [my employer] as acknowledged in letters dated 27 June […] and 10 July 2019. These letters stated that WCB was working with the [employer] to obtain back a full copy of the report with a redacted copy being reissued. In a FOIP request received from [my employer] on 18 October 2019 a full copy of this report was included and had not been returned to WCB as stated.
>
> I have further withdrawn my consent to have WCB share or collect any of my information. At which time it would have been prudent for WCB to advise they were closing my file this was not

> the case. WCB continued to collect and share my medical information with [my employer]. Then claim that it is not possible to withdraw consent. This is in contradiction to the [*Workers' Compensation Act*], the information provided in workers handbook, [the Alberta *Freedom of Information and Protection of Privacy Act* and the *Personal Information Protection Act]*.
>
> WCB then continued to act in a prejudicial manner and an unfair manner by sharing medical information about myself with [my employer] after my consent had been withdrawn and without sharing the information with myself.
>
> As a result I would like to request a review of the WCB decision.

[para 9] The Commissioner authorized a senior information and privacy manager to investigate and attempt to settle the matter. At the conclusion of this process, the Complainant requested an inquiry. The Commissioner agreed to conduct an inquiry and delegated the authority to conduct it to me.

II. ISSUE: Did the Public Body disclose the Complainant's personal information in contravention of Part 2 of the FOIP Act?

[para 10] Section 40 of the *Freedom of Information and Protection of Privacy Act* (the FOIP Act) restricts the ability of a public body to disclose personal information. It states, in part:

> *40(1) A public body may disclose personal information only*
>
> *[…]*
>
> *(b) if the disclosure would not be an unreasonable invasion of a third party's personal privacy under section 17,*
>
> *(c) for the purpose for which the information was collected or compiled or for a use consistent with that purpose,*
>
> *(d) if the individual the information is about has identified the information and consented, in the prescribed manner, to the disclosure,*
>
> *(e) for the purpose of complying with an enactment of Alberta or Canada or with a treaty, arrangement or agreement made under an enactment of Alberta or Canada,*
>
> *(f) for any purpose in accordance with an enactment of Alberta or Canada that authorizes or requires the disclosure […]*
>
> *(4) A public body may disclose personal information only to the extent necessary to enable the public body to carry out the purposes described in subsections (1), (2) and (3) in a reasonable manner.*

[para 11] The complaint before me is that the Public Body disclosed a psychiatric IME report about the Complainant to a representative of the Complainant's employer, as well as a medical consultant's memo. The Public Body also provided the IME report to a psychologist and a general practitioner. The Complainant argues that these disclosures were in contravention of Part 2 of the FOIP Act.

What is the nature of the information that was disclosed?

[para 12] The type of information that the Public Body disclosed in this case is the subject of more than one statutory scheme, in addition to the common law. In *Bell ExpressVu Limited Partnership v. Rex*, 2002 SCC 42 (CanLII), [2002] 2 SCR 559 (*Bell ExpressVu*) paragraph 27 the Supreme Court of Canada determined that statutory interpretation requires consideration of all statutes dealing with the same subject matter:

> The preferred approach recognizes the important role that context must inevitably play when a court construes the written words of a statute: as Professor John Willis incisively noted in his seminal article "Statute Interpretation in a Nutshell" (1938), 16 Can. Bar Rev. 1, at p. 6, "words, like people, take their colour from their surroundings". This being the case, where the provision under consideration is found in an Act that is itself a component of a larger statutory scheme, the surroundings that colour the words and the scheme of the Act are more expansive. In such an instance, the application of Driedger's principle gives rise to what was described in *R. v. Ulybel* Enterprises Ltd., [2001] 2 S.C.R. 867, 2001 SCC 56, at para. 52, as "the principle of interpretation that presumes a harmony, coherence, and consistency between statutes dealing with the same subject matter". (See also Stoddard v. Watson, 1993 CanLII 59 (SCC), [1993] 2 S.C.R. 1069, at p. 1079; Pointe-Claire (City) v. Quebec (Labour Court), 1997 CanLII 390 (SCC), [1997] 1 S.C.R. 1015, at para. 61, per Lamer C.J.)

[para 13] I note, too, that the common law provides important context when interpreting statutory schemes and provisions. In *Sullivan and Driedger on the Construction of Statutes*, Ruth Sullivan states:

> Legislation may be enacted in a common law area or it may touch on matters that are dealt with at common law. In the case of reform legislation, the common law provides the conceptual framework in which the legislation must fit. The importance of the common law context in interpreting such legislation is obvious. In the case of program legislation, the legislation creates its own conceptual framework and meant to operate independently of the common law. Even in the case of program legislation, however, the common law is often a relevant source of law and it is always part of the legal context in which the legislation must be read.[i]

[para 14] As the *Workers' Compensation Act* (the *WCA*), the *Health Information Act* (the *HIA*) , and the *Freedom of Information and Protection of Privacy Act* all address the kind of information that is the subject of the complaint, I will first review the relevant statutes and the common law to determine the applicable standards. These standards will help me to evaluate the Public Body's arguments regarding its home statute and its interpretation of its powers. I will then determine whether the provisions it cites as authority to disclose the information that is the subject of the complaint provide such authority.

[para 15] I will also determine whether the evidence supports the Public Body's arguments as to its purposes in disclosing the information.

[para 16] The Workers' Compensation Board is a public body within the terms of section 1(p) of the FOIP Act. It must therefore comply with the provisions of the FOIP Act addressing personal information, in addition to the provisions of the WCA. Section 1(n) of the FOIP Act defines "personal information". This provision states:

> *1 In this Act,*
>
> > *(n) "personal information" means recorded information about an identifiable individual, including*
> >
> > > *(i) the individual's name, home or business address or home or business telephone number,*
> > >
> > > *(ii) the individual's race, national or ethnic origin, colour or religious or political beliefs or associations,*
> > >
> > > *(iii) the individual's age, sex, marital status or family status,*
> > >
> > > *(iv) an identifying number, symbol or other particular assigned to the individual,*
> > >
> > > *(v) the individual's fingerprints, other biometric information, blood type, genetic information or inheritable characteristics,*
> > >
> > > *(vi) information about the individual's health and health care history, including information about a physical or mental disability,*
> > >
> > > *(vii) information about the individual's educational, financial, employment or criminal history, including criminal records where a pardon has been given,*
> > >
> > > *(viii) anyone else's opinions about the individual, and*
> > >
> > > *(ix) the individual's personal views or opinions, except if they are about someone else […]*

[para 17] The content of the IME report and the consultant's memo is information "about the Complainant" within the terms of section 1(n) of the FOIP Act. As a result, it is personal information and the restrictions on disclosure in Part 2 of the FOIP Act apply to the Public Body's handling of the IME report and the consultant's memo.

[para 18] The *Health Information Act* (HIA) is a paramount statute governing the collection, use, and disclosure of health information by custodians. While the Public Body is not, itself, a custodian, the complaint in this case is, in part, that the Public Body disclosed the Complainant's personal information regarding his mental health to a

general practitioner who is a custodian under the HIA. The HIA sets out the circumstances in which custodians may collect patient information.

[para 19] Section 20 of the HIA restricts the ability of a custodian, such as a general practitioner, to collect health information. It states:

> *20 A custodian may collect individually identifying health information*
>
> *(a) if the collection of that information is expressly authorized by an enactment of Alberta or Canada, or*
>
> *(b) if that information relates directly to and is necessary to enable the custodian to carry out a purpose that is authorized under section 27.*

[para 20] If a custodian lacks authority to collect health information under the HIA, the custodian will also be unable to use health information to provide treatment.

[para 21] The common law also addresses health information. In *McInerney v. McDonald*, 1992 CanLII 57 (SCC), [1992] 2 SCR 138 (*McInerney v. McDonald*), the Supreme Court of Canada commented on the privacy interests an individual has in the individual's own health information:

> When a patient approaches a physician for health care, he or she discloses sensitive information concerning personal aspects of his or her life. The patient may also bring into the relationship information relating to work done by other medical professionals. The policy statement of the Canadian Medical Association cited earlier indicates that a physician cannot obtain access to this information without the patient's consent or a court order. Thus, at least in part, medical records contain information about the patient revealed by the patient, and information that is acquired and recorded on behalf of the patient. Of primary significance is the fact that the records consist of information that is highly private and personal to the individual. It is information that goes to the personal integrity and autonomy of the patient. As counsel for the respondent put it in oral argument: "[The respondent] wanted access to information on her body, the body of Mrs. MacDonald." In *R. v. Dyment*, 1988 CanLII 10 (SCC), [1988] 2 S.C.R. 417, at p. 429, I noted that such information remains in a fundamental sense one's own, for the individual to communicate or retain as he or she sees fit. Support for this view can be found in *Halls v. Mitchell*, 1928 CanLII 1 (SCC), [1928] S.C.R. 125, at p. 136. There Duff J. held that professional secrets acquired from a patient by a physician in the course of his or her practice are the patient's secrets and, normally, are under the patient's control. In sum, an individual may decide to make personal information available to others to obtain certain benefits such as medical advice and treatment. Nevertheless, as stated in the report of the Task Force on Privacy and Computers (1972), at p. 14, he or she has a "basic and continuing interest in what happens to this information, and in controlling access to it".
>
> […]
>
> The fiduciary duty to provide access to medical records is ultimately grounded in the nature of the patient's interest in his or her records. As discussed earlier, information about oneself revealed to a doctor acting in a professional capacity remains, in a fundamental sense, one's own. The doctor's position is one of trust and confidence. The information conveyed is held in a fashion somewhat akin to a trust. While the doctor is the owner of the actual record, the information is to be used by the physician for the benefit of the patient. The confiding of the information to the physician for

> medical purposes gives rise to an expectation that the patient's interest in and control of the information will continue.

[para 22] In the foregoing case, the Supreme Court of Canada held that there is a fiduciary relationship between physicians and patients. An aspect of this relationship is the physician's duty to keep patient health information private except in exceptional circumstances.

[para 23] In the case before me, the Complainant signed a form acknowledging that he and the psychiatrist conducting the IME were not entering a "traditional physician/ patient relationship". As a result, the psychiatrist would not necessarily have the same fiduciary duties to the Complainant that he would have if the Complainant had entered a traditional physician / patient relationship. At the same time, *McInerney* holds that an individual has "a basic and continuing interest" in the individual's medical information and "in controlling access to it". The consent form signed by the Complainant does not indicate the extent to which the "physician / patient relationship" would deviate from the traditional relationship, and so the Complainant could still reasonably expect to have some ability to control access to the health information in the IME report.

[para 24] In *Sherman Estate v. Donovan*, 2021 SCC 25 (CanLII), [2021] 2 SCR 75, the Supreme Court of Canada held that there is a public interest in protecting personal information going to an individual's "biographical core" that may outweigh even the open Court principle. The Court noted that information about medical conditions is sensitive information that could give rise to a serious risk if disclosed:

> There is no need here to provide an exhaustive catalogue of the range of sensitive personal information that, if exposed, could give rise to a serious risk. It is enough to say that courts have demonstrated a willingness to recognize the sensitivity of information related to stigmatized medical conditions (see, e.g., *A.B.*, at para. 9), stigmatized work (see, e.g., *Work Safe Twerk Safe v. Her Majesty the Queen in Right of Ontario*, 2021 ONSC 1100, at para. 28 (CanLII)), sexual orientation (see, e.g., *Paterson*, at paras. 76, 78 and 87-88), and subjection to sexual assault or harassment (see, e.g., *Fedeli v. Brown*, 2020 ONSC 994, at para. 9 (CanLII)). I would also note the submission of the intervener the Income Security Advocacy Centre, that detailed information about family structure and work history could in some circumstances constitute sensitive information. The question in every case is whether the information reveals something intimate and personal about the individual, their lifestyle or their experiences.

[para 25] The content of the IME report is information that a patient would normally expect to be held in confidence as it contains the Complainant's medical history, intimate details about his life, information about treatment, the Complainant's psychological state, and personal thoughts. At the time the IME was undertaken, it was understood that the psychiatrist would provide the IME report to the Public Body.

[para 26] The Legislature has the power to amend the common law through statute; however, as Ruth Sullivan notes, there is a presumption that legislation does not amend the common law:

> **Presumption against changing the common law**. Although legislation is paramount, it is presumed that legislatures respect the common law. More precisely, it is presumed that legislatures

> do not intend to interfere with common law rights, to oust the jurisdiction of common law courts, or generally to change the common law. As explained in Halsbury, in a formulation adopted by many Canadian courts:
>
> > Except in so far as they are clearly and unambiguously intended to do so, statutes should not be construed so as to make any alteration in the common law or to change any established principle of law.
>
> These presumptions permit the courts to insist on precise and explicit direction from the legislature before accepting any change. The common law is thus shielded from inadvertent legislative encroachments.[ii]

[para 27] When I review the Public Body's arguments in relation to the WCA, I will also consider the common law to determine the extent to which the common law is preserved or is amended by the WCA and the FOIP Act with regard to an individual's communications to a physician, as this will assist in the interpretation of the statutory provisions.

The Public Body's position

[para 28] The Public Body concedes that the IME report that is the subject of the complaint should not have been provided to the employer in its entirety; however, the Public Body argues that it is authorized to disclose portions of the IME report to the employer and that it was authorized to disclose the IME report to the Complainant's treating physicians.

[para 29] The Public Body points to sections 40(1)(b), (c), (e), and (f) of the FOIP Act as authority for the disclosures at issue. I will also address section 40(1)(d), which addresses consent, given that the Complainant signed a consent form prior to undergoing the examination on which the IME report is based.

[para 30] I turn first to the question of whether the consent form signed by the Complainant complied with the terms of the FOIP Act with the result that section 40(1)(d) authorizes the disclosures at issue.

Section 40(1)(d)

[para 31] Cited above, section 40(1)(d) of the FOIP Act authorizes a public body to disclose personal information if the Complainant identifies the personal information to be disclosed "and consent[s], in the prescribed manner, to the disclosure".

[para 32] The Public Body explained its process for obtaining consent to disclose personal and health information:

> At the time of the disclosure of [the psychiatrist's] IME report to [the Complainant's] treating physicians, the process was that the IME physician would obtain the worker's consent / acknowledgement at the beginning of the IME appointment with the names of the physicians, and then add the treating physician as a 'cc' to the report. In some cases, the consent to disclose the report to the worker's treating physicians may have been obtained verbally and noted in the report.

After the report was submitted to the WCB, if the Consent and Acknowledgement form was signed by the worker, the IME report was provided to their treating physician(s) based on their signed consent.

[para 33] The Complainant signed the following form but did not provide the names of current treating physicians, leaving the spaces provided blank:

I hereby consent to a medical examination completed by [the psychiatrist] (a Physician who has agreed to provide this service for the Workers' Compensation Board) with the assistance of other medical services staff as may be necessary.

This appointment will be for a medical history and/or physical examination only. Additional tests, such as x-rays, may be requested following this examination.

I acknowledge that all relevant information obtained during the examination may be reported to the Workers' Compensation Board, my treating physician(s) for this condition, and other persons as permitted by law. My current treating physician(s) for this condition is (are) [my emphasis]

Dr. _____ who is located at _____

Dr. _____ who is located at _____

Dr. _____ who is located at _____

I understand that the purpose of this medical examination is for evaluation only, and no treatment will be undertaken. I realize that no traditional physician/patient relationship is established during the course of this assessment.

I further understand and acknowledge that the use of recording devices of any kind, without the signed consent of both myself and the examining physician, is prohibited. This policy will be strictly enforced and any violation may result in immediate termination of the medical examination.

Signed this 04 day of December 2017.

[para 34] Section 7(2) of the Freedom of Information and Protection of Privacy Regulation sets out the requirements of consent use and disclose personal information under the FOIP Act. It states:

7(2) The consent of an individual to a public body's using or disclosing any of the individual's personal information under section 39(1)(b) or 40(1)(d) of the Act

(a) must meet the requirements of subsection (4), (5) or (6), and

(b) must specify to whom the personal information may be disclosed and how the personal information may be used.

[para 35] Sections 7(6) and 7(7) of the Regulation sets out the requirements of oral consent. These provisions state:

7(6) For the purposes of this section, a consent that is given orally is valid if

(a) the head of the public body has established rules respecting the purposes for which consent that is given orally is acceptable,

(b) the purpose for which the consent is given falls within one or more of the purposes set out in the rules mentioned in clause (a),

(c) the public body has explicitly communicated that it will accept consent that is given orally,

(d) the record of the consent

(i) is accessible by the public body so as to be usable for subsequent reference, and

(ii) is capable of being retained by the public body,

(e) the public body has authenticated the identity of the individual giving consent, and

(f) the method of authentication is reliable for the purpose of verifying the identity of the individual and for associating the consent with the individual.

7(7) For the purposes of subsection (6)(d), a record of the consent must be

(a) an audio recording of the consent created by or on behalf of the public body,

(b) in the form of documentation of the consent created by an independent third party, or

(c) in the form of documentation of the consent created by the public body in accordance with the rules established by the head of the public body.

[para 36] Cited above, section 40(1)(d) permits a public body to disclose personal information when the person the information is about identifies the information and consents to its disclosure "in the prescribed manner".

[para 37] I turn now to the question of whether the consent meets the requirements of the FOIP Act.

Consent to disclose to the employer

[para 38] The form signed by the Complainant does not refer to disclosing the information obtained from the independent medical examination to an employer. The

term “employer” does not appear on the form. Instead, the form refers to “other persons as permitted by law”. Presumably, the Public Body considers the Complainant’s employer to fall under this heading.

[para 39] The phrase “other persons as permitted by law” in the Public Body’s form is ambiguous. It could authorize the Public Body to disclose the IME report to anyone if it is not illegal to do so, or it could refer to providing it to someone who has established that they have legal authority to require the information, such as by presenting a Court order.

[para 40] As the form does not clearly stipulate that the employer would be given the IME report, I find that the Complainant did not consent to the disclosure to his employer within the terms of the FOIP Act.

[para 41] I find that section 40(1)(d) does not authorize the disclosure of the IME report to the employer.

The consent to disclose to the treating physicians

[para 42] The consent form is ambiguous with regard to what is meant by “treating physician[s]”. The consent form indicates that relevant information obtained from the examination will be provided to “treating physician[s]”. The form asks the examinee to provide the names of “*current* treating physician[s].” The form does not indicate how a treating physician will be identified if the examinee does not provide the name of a current treating physician or does not currently have a treating physician.

[para 43] I understand the term “treating physician” in the consent form to be synonymous with “physician currently treating the compensable condition*”* as it would not make sense to provide an IME report to a physician who no longer has a role in a worker’s care or would not be treating the condition that is the subject of the worker’s claim for compensation.

[para 44] The IME report indicates that the psychiatrist confirmed with the Complainant that he had seen a general practitioner and continued to see a psychologist. The IME Report indicates that the last progress report received from the general practitioner regarding the Complainant’s PTSD was July 5, 2016, seventeen months before the IME examination of December 2017. The IME report notes that the Complainant saw the general practitioner “as little as possible” and that the Complainant perceived that “mental health care is not the [general practitioner’s] strong suit.” While the Complainant may be interpreted as indicating he continued to be a patient of the general physician, his comments and the fact that he had not seen the general practitioner in seventeen months for treatment of PTSD does not support finding that the general physician would treat the Complainant’s PTSD or was currently treating it.

[para 45] The Public Body concedes the foregoing point where it states:

> In this case, [the Complainant] did not list the names of his treating physicians on the

> Consent/Acknowledgment form. However, as noted in the IME report, he confirmed with Dr. […] that Dr. […] and Dr. […] were his current treating physicians. They were also noted on the claim file as active participants on the claim file. [The Complainant] signed the form acknowledging that the reporting would be provided to his treating physicians. This acknowledgement was *deemed* [my emphasis] by Medical Services and the Case Manager to be a valid consent signed by [the Complainant] providing authorization to disclose the report to his treating physicians […]
>
> As a result of [the Complainant's] concerns, this process was reviewed and subsequently changed by the Medical Services department to only send IME reports to a treating physician when the individual provides the name of the physician on the Consent /Acknowledgement form. This change was made to ensure a report is not sent to a treating physician who may not be actively involved with the individual's claim file.

The Public Body relies on the fact that the Applicant signed the form as signifying consent to disclosure to the general practitioner and the psychologist, despite the fact that he did not provide their names as "current treating physicians" for PTSD. The form does not indicate the process by which the Public Body would determine the identity of the Complainant's current treating physicians for the compensable condition, if the Complainant did not fill in the blanks. Moreover, the form does not state that the Public Body would do so if the Complainant did not. The form appears to seek the Complainant's input as to treating physicians to whom the Public Body may disclose the report. The fact that the form includes spaces for workers to identify their current treating physicians could reasonably be interpreted as excluding from the consent any physician *not* so identified. It appears that is how the Complainant interpreted the form. Had the form indicated that the IME report would be sent to any physician listed as "active" in the Public Body's systems, and the Complainant signed the consent, then that would be consent under the FOIP Act to disclose to the general practitioner. The form signed by the Complainant does not contain any such notice.

[para 46] The Complainant did not confirm that the general practitioner was his *current* treating physician for PTSD. He did not put the general practitioner's name in the space provided for the name of a current treating physician and he indicated to the psychiatrist that he did not believe the general practitioner knew how to treat PTSD and that he was avoiding seeing the general practitioner. As he left the space blank, there is no clear, written statement in the form that the Complainant consented to disclosure to the general practitioner. The IME report indicates that it had been seventeen months since the Complainant had last seen the general practitioner. While it is possible that the Complainant would seek treatment for PTSD from the general practitioner, the intention documented in the IME report was that he would not. At best, the references in the IME report as to whether the general practitioner continued to have a role in treating the Complainant's PTSD are ambiguous. I am unable to say that the Complainant, in signing the consent form, authorized disclosure of the IME report to the general practitioner.

[para 47] I note that the Public Body refers to the psychiatrist as confirming with the Complainant verbally that he continued to see the general practitioner. Cited above, section 7(6) of the Regulation contains express requirements for verbal consent. I find these are not met. In addition, from my review of the IME report, I am unable to say that the Complainant was seeking treatment for PTSD from the general practitioner at the

time the IME report was written, such that he could be described as a "current treating physician for this condition". The Public Body's form was intended to authorize disclosure to a worker's current treating physician for the condition; the contents of the IME report do not confirm that the general practitioner was currently treating the Complainant's PTSD.

[para 48] It is unclear that a "psychologist" would be included in the term "treating physician" where it appears in the form. Psychologists are not medical doctors and are not members of the College of Physicians and Surgeons of Alberta; rather, they are members of the College of Alberta Psychologists. I am unable to say that a reference to a "current treating physician" necessarily includes a psychologist or that a worker completing the consent form would understand the term "treating physician" to refer to a psychologist.

[para 49] I find that the Complainant did not consent to the disclosure of his personal information in the IME report by the Public Body to the general practitioner or to the psychologist, as it is not clear from the form that these two persons were being described by the term "current treating physician for this condition" or "treating physician". The Complainant did not provide their names as current treating physicians for his condition. I find that section 40(1)(d) does not authorize the Public Body's disclosure of the IME report to the psychologist or the general practitioner.

Sections 40(1)(e) and (f)(compliance with / authority conferred by, legislation)

The disclosures to the employer

[para 50] The Public Body provided the following explanation of its role in the workers' compensation system:

> The WCB's mandate is to provide coverage to injured workers for lost employment income and provide health care, rehabilitation and other services required because of work-related injuries, while employers are shielded from litigation for such work-related injuries. The clear purpose of the WCA is to create a separate system for the efficient and timely payment of no-fault benefits to injured workers. As such, the WCB holds a unique and important position; it must establish policy and procedures in accordance with the annunciated purposes of the WCA to ensure the viability and functionality of the system.
>
> The WCB acts as a neutral administrator of the system, balancing the interests of both workers and employers. Due to the separate system created by statute, the adjudication of workers' compensation claims and the administrative process followed by the WCB must be afforded significant deference.

[para 51] The Public Body states:

> The WCB submits that with the possible exception of the disclosure of the unredacted copy of the Psychological IME to [the Complainant's] employer, the disclosures to [the psychologist and the general practitioner] and the disclosure of the Medical Consultant Memo to the date of accident employer were authorized under section 147 of the *Workers' Compensation Act* and permitted under sections 40(1)(b)(c)(e) and (f) of the *Freedom of Information and Protection of Privacy Act*

(the FOIP Act). As required by section 40(4) of the FOIP Act the authorized disclosures were limited to the extent necessary to provide the physicians and the employer with the information they required for a purpose under the WCA

[para 52] The Public Body argues that it was authorized or required by the WCA to provide the IME Report and the medical consultant's memo to the employer. It states:

> In addition to the requirement to notify the employer when an entitlement decision is made under section 44, and provide progress reports under section 35, the WCB has the legislated authority to disclose details about an individual's claim to an employer based on section 147(3). The date of accident employer is considered to be an interested party and therefore, "a person directly concerned" under section 147(3)(a) of the *WCA.* Sections 147(2) and 147(3)(a) state:
>
> > *147(2) No member of the board of directors and no officer or employee of the Board shall, except as provided in this section, disclose or allow to be disclosed information respecting a worker or the business of an employer that comes to that person's knowledge or is in that person's possession as a member, officer or employee.*
> >
> > *(3) Information referred to in subsections (1) and (2), including personal information, may be disclosed to a) a person directly concerned, for a purpose the Board considers necessary* to *carry out the purposes of this Act, or*

[para 53] The Public Body provided the following explanation of its release of the IME report to the Complainant's employer:

> On May 29, 2019, [a representative of the Complainant's employer] submitted a completed C-1096 form in which she requested a copy of the May 24, 2019, Medical Consultant Memo drafted by Dr. […].
>
> […]
>
> The C-1096 form includes the following acknowledgement:
>
> I am authorized by the above noted employer to request claim file(s) or claim file documents from the WCB. I acknowledge that this information is being requested and provided under the authority of the *Workers' Compensation Act* (the "WCA") for the following purposes:
>
> - Facilitate return to work planning, understand progress of medical and vocational rehabilitation and decisions made by the WCB*;
> - Contemplate and/or advance a Review before the Dispute Resolution and Decision Review Body or Appeal before the Appeals Commission [section 147(4)]
>
> Where information is obtained under section 147(4) of the WCA, that information may only be used for the purpose of review or appeal under that WCA. I acknowledge that if the information is used for <u>any other</u> purpose without the consent of the WCB I may be guilty of an offense (section 152) or charged an administrative penalty (section 152.1) under the WCA. I also acknowledge that I may be subject to other provincial and federal privacy law and other legislation that places further limits to my use and disclosure of the information provided to me by the WCB and it is my obligation to ensure compliance.
>
> **In accordance with WCB's authority under Sections 35, 44, and 147(3) of the WCA*

> Before being disclosed to the employer, information related to past work and unrelated claims was blacked out by the Access to Information area. A copy of the severed version of the Memo is attached.

[para 54] In this case, the Complainant's employer indicated that it was requesting the information for the purposes of "return to work planning" and to "understand progress of medical and vocational rehabilitation and decisions made by the WCB" and not in contemplation of a request for review or appeal.

[para 55] I understand from the Public Body's submissions and the content of the form that the Public Body holds the view that sections 35, 44, and 147 of the WCA operate in concert to authorize the disclosures that are the subject of the complaint. I also understand that the Public Body has created a form entitled the "C-1096 form" to enable employers to request copies of records containing a worker's personal and health information under the collective authority of the provisions the Public Body cites, in circumstances where a decision is not under appeal.

[para 56] The WCA, under which the Public Body operates, includes provisions expressly requiring physicians to disclose worker health information to the Public Body in circumstances not authorized by the common law. As will be seen, it also contains provisions authorizing disclosure of specific types of information to an employer.

[para 57] Section 34 of the WCA requires a physician to provide the health information of a worker to the Public Body once the physician has attended the worker in relation to a work-related injury. It states:

> *34(1) A physician who attends an injured worker shall*
>
> *(a) forward a report to the Board*
>
> *(i) within 2 days after the date of the physician's first attendance on the worker if the physician considers that the injury to the worker will or is likely to disable the worker for more than the day of the accident or that it may cause complications that may contribute to disablement in the future, and*
>
> *(ii) at any time when requested by the Board to do so,*
>
> *[…]*
>
> *(4) A report made or submitted to the Board under this Act by a physician or a hospital or other treating agency is for the use and purpose of the Board only, and is a privileged communication of the person making or submitting it and, unless it is proved that it was made maliciously, is not admissible in evidence or subject to production in any court in an action or proceeding against that person*
>
> *[…]*

[para 58] Section 34(1) of the WCA requires physicians to disclose a worker's health information to the Public Body after treating a patient's work-related injury.

[para 59] Section 34(4) of the WCA states that a report submitted by a physician or hospital or other treating agency is for the use and purpose of the Board only, and is a privileged communication. The privilege belongs to the physician, hospital or other treating agency submitting the information.

[para 60] Section 35 of the WCA states:

> *35 On the written request of the employer of an injured worker, the Board shall provide the employer with a report of the progress being made by the worker.*

The foregoing provision authorizes the Public Body to provide a report of a worker's progress to an employer when the employer requests a report of progress in writing.

[para 61] Sections 38 and 39 of the *Workers' Compensation Act* contain authority for the Public Body to have medical examinations conducted in relation to workers. Section 38 states:

> *38(1) A worker claiming compensation or to whom compensation is payable under this Act shall, if the Board requires it, undergo a medical examination, at a time and place determined by the Board, to be conducted by a physician selected by the worker from a roster established by the Board, and the Board shall pay the costs of that examination.*
>
> *(2) If a worker contravenes subsection (1) or in any way obstructs an examination,*
>
> > *(a) the worker's right to compensation is suspended until the examination has taken place, and*
> >
> > *(b) the worker's condition as found by the examination is, unless the Board otherwise directs, deemed to have been the worker's condition at the date for which the examination was called.*
>
> *(3) If a worker claims compensation under this Act the Board, in order to assist it in determining the worker's entitlement to compensation, may*
>
> > *(a) require that a medical investigation be conducted in respect of the worker in the manner it considers necessary, or*
> >
> > *(b) accept the results of a medical investigation already conducted in respect of that worker,*
>
> *and, in either case, the Board may pay the costs of the investigation.*

> *(4) While a medical investigation is being conducted under subsection (3), the Board may pay compensation to the worker notwithstanding that the worker's entitlement to it has not yet been determined.*

Section 38 does not speak to whether and to whom the examination report can be disclosed, including to the Public Body.

[para 62] Section 39 of the WCA contains authority for an employer to request a medical examination and the Public Body to require a medical investigation on receiving the request of an employer.

> *39(1) At the written request of the employer of a worker who claims compensation or to whom compensation is payable under this Act, the Board may require the worker to undergo a medical examination by a physician selected by the Board.*
>
> *(2) If a worker fails to undergo or in any way obstructs the examination, the Board may suspend the worker's right to compensation until the examination has taken place.*
>
> *(3) A physician who makes an examination of a worker pursuant to this section shall submit the physician's report on the worker <u>to the Board and to the worker on the worker's request</u>.* [my emphasis]
>
> *(4) The cost of the examination and the reasonable expenses of the worker in connection with the examination shall be borne by the employer and, if the employer fails to pay those expenses, the Board may pay the expenses and the employer is liable to pay the Board the amount so paid.*

[para 63] Section 39(3) of the foregoing provision establishes that the Public Body and the worker are to be given copies of the report. Section 39 does *not* say that the *employer* is to be given a copy of the medical examination report, even though the employer requested that the examination take place. The fact that the provision states the Public Body and the worker should be given the report indicates that the Legislature turned its mind to the issue of who should receive the report. The Legislature decided that the employer would not be given a copy of the report, despite requiring the employer to pay for the examination. Section 39 alters the common law as it *requires* an examining physician to provide a copy of the report to the Public Body, and to a worker, on request.

[para 64] Once the Public Body has made a decision regarding a worker's entitlement to compensation, section 44 authorizes it to provide *the particulars of the decision and a summary of reasons*, including medical reasons, *on request*. Section 44 states:

> *44 On the making of a determination as to the entitlement of a worker or the worker's dependant to compensation under this Act, the employer and the worker*

or, in the case of the worker's death, the worker's dependant, shall, as soon as practicable, be advised in writing of the particulars of the determination, and shall, on request, be provided with a summary of the reasons, including medical reasons, for the determination.

[para 65] Section 44 may be viewed as modifying the common law as it authorizes the Public Body to provide medical reasons for an entitlement decision to an employer. This provision does not go so far as to authorize providing the medical reporting on which the decision is based to the employer. It is only the particulars of a decision and a *summary* of reasons – which may include medical reasons – that the employer is owed.

Section 147(3)

[para 66] Section 147 of the WCA states:

147(1) No member of the board of directors, no officer or employee of the Board and no person authorized to make an investigation under this Act shall, except as provided in this section, disclose or allow to be disclosed any information that is obtained by that person in making the investigation or that comes to that person's knowledge in connection with the investigation.

(2) No member of the board of directors and no officer or employee of the Board shall, except as provided in this section, disclose or allow to be disclosed information respecting a worker or the business of an employer that comes to that person's knowledge or is in that person's possession as a member, officer or employee.

(3) Information referred to in subsections (1) and (2), including personal information, may be disclosed to

(a) a person directly concerned, for a purpose the Board considers necessary to carry out the purposes of this Act, or

(b) an agency or department of the Government of Canada, the Government of Alberta or the government of another province or territory, for a purpose the Board considers necessary to carry out the purposes of this Act or for any purpose in accordance with an enactment of Alberta, of another province or territory of Canada or of Canada that authorizes or requires the disclosure.

(4) Where a matter is being, or may be, reviewed under section 21(3) or 9.4 or appealed under section 13.2, the following persons are entitled, on request, to receive, and the Board is authorized to disclose, copies of information, including personal information, that is in the Board's possession and related to the claim or matter under review or appeal:

(a) the worker, or the worker's personal representative or dependant in the case of the death or incapacity of the worker, or the agent of any of them;

(b) the employer or the employer's agent;

(c) a person with a direct interest in the claim or matter that is the subject of the review or appeal, or the agent of that person.

(5) Persons referred to in subsection (4) shall not use or disclose the information provided under that subsection for any purpose other than the review or appeal.

[para 67] In Order F2019-23, I reviewed past decisions addressing section 147 of the WCA and said:

> I acknowledge that the Public Body interprets section 147(3) as a standalone provision authorizing the Public Body to disclose personal information to a person directly concerned, without consideration of any other statutory provisions, once the Board, presumably acting through its employees, considers it necessary to disclose the information to carry out the purposes of the Act. I agree that this is a possible interpretation of section 147(3). However, in my view, the context created by subsections (1), (2), and (4), in addition to section 44 of the WCA, argues against the idea that the provision is intended to allow for the determination of necessity by individual members, employees or officers on an ad hoc, case-by case basis.
>
> Rather, in my view, section 147(3) is intended to establish that the prohibitions in subsection (1) and (2) do not apply in circumstances in which a prior policy determination that disclosures of a particular kind are necessary to carry out the purposes of the WCA applies in the particular case.
>
> In reaching this conclusion, I have reviewed earlier decisions of this office in which the adjudicator interpreted an earlier version of section 147, which permitted information sharing "under the authority of the Board", as permitting sharing only "in accordance with the specific provisions of the WCA and the policies of the WCB that authorize the sharing of specified information in specified circumstances." (See Orders F2006-026, F2009-041, F2011-006, F2013-11, and F2013-52.) I acknowledge that the Act has since been amended. However, the reasoning from the earlier cases continues to apply to the amended provisions.
>
> If subsection 147(3) is interpreted as a standalone provision authorizing the Public Body to disclose information on an ad hoc basis, then the restrictions on disclosure contained is subsections (1) and (2) would not be lifted with regard to members of the Board, officers, or employees, even where other provisions of the WCA would authorize or require […] such persons to disclose information.
>
> In addition, as discussed above, section 44 requires the Public Body to provide reasons for entitlement decisions "on request". Section 147(4) contains authority for the Board to disclose "copies of information, including personal information, that is in the Board's possession and related to the claim or matter under review or appeal" to persons entitled to receive the information, "on request". If section 147(3) were interpreted as authorizing the Public Body to disclose information, including personal information, when an individual employee or officer decides it is necessary to do so to carry out the purposes of the WCA, without reference to the provisions of the WCA and related policies that specifically authorize disclosure, then sections 44 and 147(4) with their attendant restriction that there be a request for information before it is disclosed, would be superfluous, as the authority to make the disclosure without a request would already be contained in subsection 147(3).

> Section 147(3) is better interpreted as clarifying that the prohibitions in subsections (1) and (2) do not extend to disclosures by members of the board of directors, officers or employees, of the board, when the disclosure is made to a person directly concerned within the terms of the Act and the Board's pre-determined policies for information disclosures. I say this because this interpretation does not render section 44 and 147(4) meaningless, but allows them to serve discrete functions. Moreover, it enables members of the Board of Directors, officers and employees to make disclosures when their duties under the WCA require it. It is, in other words, an exception to the prohibitions that is meant to work in concert with the authorizing provisions of the legislation and related policies.

In the foregoing order, I rejected the argument that section 147(3) is a standalone provision authorizing disclosures in circumstances not expressly or implicitly authorized by provisions of the WCA. I considered section 147(1) and (2) to be prohibitions on unauthorized disclosures by representatives of the WCB, while I considered section 147(3) to permit disclosure of the information described in subsections (1) and (2) by representatives of the Public Body where authorized by the WCA or the Public Body's policies by which it interprets provisions of the WCA. As noted in my order just cited, sections 147(1) and 147(2) create general prohibitions on disclosure by the Public Body's representatives, and section 147(3)(a) makes clear that these prohibitions do not apply when representatives disclose information for purposes related to their role as representatives of the Public Body and are carrying out purposes of the WCA. Section 147(3) does not apply to the Public Body itself, but to the representatives and employees referenced in sections 147(1) and (2). The intent of sections 147(1), (2), and (3) is to prohibit employees and other representatives of the Public Body from disclosing sensitive information obtained in the course of their duties for purposes unrelated to their duties.

[para 68] It is not unusual for a statute to prohibit a public body's employees who handle sensitive information in the course of their employment from using or disclosing that information for their own purposes. For example, section 20(2) of the *Public Service Act* contains a prohibition similar in effect to sections 147(1), (2), and (3) of the WCA:

> *20(2) Any employee who without due authorization discloses or makes known any matter or thing that comes to the employee's knowledge by reason of the employee's employment in the public service of Alberta is guilty of an offence and liable to a fine of not more than $500.*

While section 20(2) of the *Public Service Act* is briefer, the meaning of the provision is similar to sections 147(1), (2), and (3) of the WCA. In addition, section 152 of the WCA makes it an offence to contravene the WCA. Should an employee or representative disclose information except in the circumstances authorized by section 147(3), the employee or representative may have committed an offence under section 152(1) of the WCA and be liable to pay a fine under section 152(2) if convicted.

[para 69] If it were not for section 147(3) of the WCA, employees and representatives of the Public Body would be prohibited from disclosing any information learned or obtained in the course of their duties including in circumstances where their duties under the WCA require disclosure, such as sections 35, 39 and 44 of the WCA.

The purpose of section 147(3) is to *permit employees and representatives* of the Public Body to disclose information falling within the terms of sections 147(1) and (2) where disclosure is authorized by their employment obligations, but prohibiting disclosure otherwise. Section 147(3) is not intended to authorize *the Public Body* to disclose information or records; only its individual representatives referenced in section 147(1) and (2) are authorized to disclose information for employment purposes under this provision. If section 147(3) is interpreted as applying to the Public Body and intended to empower it to make information sharing policies on an *ad hoc* basis, there is nothing to authorize employees to disclose information subject to section 147(1) or (2) even when their employment duties or the Public Body's policies require the disclosure.

[para 70] Although the Public Body considers section 147(3) to be a policy making power, it is section 6 of the WCA that gives the Public Body the power to make policy. It states, in part:

> *6 The board of directors*
>
> *(a) shall*
>
> *(i) determine the Board's compensation policy,*
>
> *(ii) review and approve the programs and operating policies of the Board, […]*

Section 6 may be viewed as authorizing the Public Body to create policies and procedures to carry out its statutory duties, which may include collecting, using, and disclosing personal information, if doing so is reasonably necessary for performing statutory duties. As section 6 already authorizes the Public Body to make policies that may require disclosing information, given that the provisions of the WCA that the policy would interpret address information sharing, it would be unnecessary for the Legislature to create a second policy-making power in section 147.

[para 71] It is unlikely that the Legislature intended section 147(3) as a standalone provision empowering the Public Body to disclose information and records on an *ad hoc* basis, given that this would mean that the prohibitions regarding disclosures by employees and representatives of the Public Body in section 147(1) and (2) would continue to apply. Such an interpretation would result in the contradictory situation that the Public Body could authorize disclosure of personal information but the representatives through whom it acts would be prohibited by statute from following its directions.

[para 72] Further, interpreting section 147(3) as a standalone provision authorizing the Public Body to disclose personal information on an *ad hoc* basis conflicts with the legislative choice to limit the disclosure of health and personal information in sections 34, 35, 39, 44, and 147(4). There would be no reason for the Legislature to enact section 147(4), as section 147(3) would already authorize the disclosure this provision contemplates, if the Public Body's interpretation is correct. Moreover, the prohibition in

section 147(5) would be unworkable, as the Public Body could then disclose the same information under section 147(3) as it may under section 147(4). That is, a recipient would not be barred from using the information for purposes other than an appeal if it also received the same information under section 147(3).

[para 73] I note, too, that section 147(3) does not indicate that it applies "notwithstanding" section 34(4). Section 34(4) appears to limit the ability of the Public Body to disclose records received from physicians under section 34(1) as it indicates such records are for the Public Body's "use and purpose *only*". While the report here in question may not be the type of report contemplated in section 34(4), because there is no exception in section 147(3) for the types of reports contemplated by section 34(4), if section 147(3) is interpreted as suggested by the Public Body, this would result in a direct conflict between section 34(4) and section 147(3) with respect to the reports contemplated by section 34(1). The Board would at the same time be prohibited from disclosing such a report to others by section 34(4), yet permitted to disclose it under section 147(3).

[para 74] As discussed above, at common law, health records are both private and privileged. The language used in section 147(3) does not expressly authorize the disclosure of health records and records containing health information by the Public Body. It is therefore unlikely that the Legislature intended this provision to alter the common law by permitting disclosure of health records in the Public Body's custody at the Public Body's discretion without the patient's consent. I am unable to find support in the legislation for the Public Body's interpretation of section 147(3). Interpreting section 147(3) as empowering the Public Body's employees and representatives to use and disclose personal information when authorized better fits with the scheme of the WCA and also respects the privileged nature of health information.

[para 75] To conclude, I find that section 147(3) serves only to establish that employees and representatives of the Public Body are not contravening the WCA or committing offences when they disclose information subject to section 147(1) and (2) in accordance with their employment or duties under the WCA, which may include following policies established by the Public Body; however, section 147(3) does not authorize the Public Body to make policies; that power exists in section 6 of the WCA.

Section 35 of the WCA

[para 76] The Public Body also argues that section 35 of the WCA authorizes the disclosure to the employer. An IME report created by a psychiatrist is not a report of progress contemplated by section 35. I draw this conclusion based on the language the Legislature has chosen to describe a report of progress under section 35, a medical examination under section 38, and a "physician's report" under section 39. The examination is not a document; there is, in fact, no reference to a document in section 38, and the reference to a report in section 39 is unrelated. Had the Legislature intended the terms to be synonymous it would have used the same terms. A progress report under section 35 is something the "Board" will provide; a physician's report is something

provided by a physician. To conclude, I find that the IME report is not "a report of progress" contemplated by section 35 and that section 35 does not provide authority for the disclosures.

Section 44 of the WCA

[para 77] I turn now to section 44, as the Public Body also argues that this provision authorizes disclosure of the IME report. I note that in Order F2006-026, the Director of Adjudication adopted the following interpretation of section 44 of the WCA:

> Section 44 of the WCA provides:
>
> > *44 On the making of a determination as to the entitlement of a worker or the worker's dependant to compensation under this Act, the employer and the worker or, in the case of the worker's death, the worker's dependant, shall, as soon as practicable, be advised in writing of the particulars of the determination, and shall, on request, be provided with a summary of the reasons, including medical reasons, for the determination.*
>
> This provision requires the Public Body to provide an employer with the particulars of a determination as to a worker's entitlement to compensation. A small part of the disclosed information falls within the phrase 'particulars of a determination as to entitlement'. Examples are: the first paragraph, and the first two sentences on page 3, of the Public Body's letter to the Complainant of August 29, 2005; the last sentence under bullet 5 on page 5, and the last two sentences under bullet 6, of the decision of the Decision Review Body of April 14, 1998. I find the Public Body was authorized to disclose such information.
>
> However, most of the information does not fall within the scope of the phrase mentioned in the preceding paragraph. The reasons for the determination, including medical reasons, are to be provided only *on request*. There is no evidence that there was a request, and there is evidence suggesting there was no request. […]
>
> Furthermore, even if requested, such information is to be in the form of a summary. Though some of the disclosed documents constitute the reasons for determinations as to entitlement, they are the full reasons, not "a summary" of the reasons or medical reasons.

[para 78] I agree with the reasoning of the Director of Adjudication and her interpretation of section 44 of the WCA. Section 44 applies only to the situation in which the Public Body has made an entitlement determination and the worker or employer has requested particulars of the decision and reasons. Section 44 does not authorize the disclosure in the case before me, as this provision applies when reasons for an entitlement decision have been requested. There is no evidence before me that an entitlement decision was made or that the Complainant, or his employer, had sought a *summary* of reasons, including medical reasons, for the decision. In this case, an employee of the Complainant's employer requested the IME report in the absence of a review or appeal and received it. The conditions precedent for section 44 to authorize disclosure – an entitlement decision and a request for reasons grounding the decision – appear to be absent. Moreover, as noted above, section 44 authorizes providing *a summary of reasons for a decision*, including medical reasons, to a worker or employer, as opposed to providing actual medical reporting regarding the worker or the worker's health records.

[para 79] I accept that there are situations where authorization to collect, use, or disclose personal information may be implicit in a statute, such as when collection, use, or disclosure of personal information is necessary to perform an authorized function reasonably. I also accept that the Public Body has a broad power to develop policies in order to perform its statutory duties. That being said, I am unable to conclude that the Public Body may make policies permitting it to disclose personal and health information to employers where provisions of the WCA do not contain express or implied authorization for the disclosure.

[para 80] Had the Public Body made an entitlement decision and had the employer requested particulars of the decision, then section 44 of the WCA would authorize providing a summary of reasons, including medical reasons, which could include discussion of the Complainant's work restrictions. It would also be open to the Public Body to communicate ongoing work restrictions in a report of progress under section 35 of the WCA. Neither provision contemplates providing an IME or medical report to an employer.

[para 81] To conclude, I find that the Public Body lacked statutory authority to disclose the IME report and the medical consultant's memo to his employer. I therefore find that sections 40(1)(e) and (f) of the FOIP Act do not authorize the disclosures of the IME report and the medical consultant's memo to the employer.

The Disclosures to the General Practitioner and the Psychologist

[para 82] The Public Body argues that the psychologist and the general practitioner are persons "directly concerned" within the terms of section 147(3). As discussed above, I interpret section 147(3) as establishing that employees and representatives of the Public Body may disclose information subject to section 147(1) or (2) without contravening those provisions when they are carrying out their duties under the WCA. I do not interpret section 147(3) as applying to the Public Body or as providing it with additional authority not present elsewhere in the WCA.

[para 83] As discussed above, sections 147(1) and (2) of the WCA prohibit disclosure of information by employees and representatives of the Public Body while section 147(3) establishes it is not a contravention of the WCA for employees and representatives to disclose information described in sections 147(1) and (2) if doing so is in accordance with their duties to the Public Body.

[para 84] I am unable to identify a provision in the WCA that contemplates providing an IME report obtained by the Public Body under section 38 of the WCA to a general practitioner, or psychologist, for the purposes the Public Body claims. I find that none of the provisions of the WCA to which the Public Body refers, authorizes the disclosure. As a consequence, sections 40(1)(e) and (f) of the FOIP Act do not authorize the disclosure of the IME report to the general practitioner and the psychologist.

Section 40(1)(c)

[para 85] Cited above, section 40(1)(c) of the FOIP Act authorizes a public body to disclose personal information if the disclosure is consistent with the Public Body's purpose in collecting the information.

[para 86] The Public Body argues with respect to the disclosure to the Complainant's employer:

> Sections 40(1)(c) of the FOIP Act also permits the WCB to disclose personal information. In this case, the employer requested clarification on permanent work restrictions in order to better determine whether they would be able to accommodate the worker in a] permanent position with [the Complainant's employer]. It is essential for employers to stay apprised of relevant factors surrounding the claim based on their obligation to work with the WCB and health care providers in developing an effective return to work plan for the injured worker. The memo was disclosed to the employer for the purpose of providing them with the information they required to continue to facilitate [the Complainant's] modified employment.

[para 87] Section 41 of the FOIP Act establishes the circumstances in which it can be said that information is or has been used or disclosed for purposes consistent with those for which the information was collected. It states:

> *41 For the purposes of sections 39(1)(a) and 40(1)(c), a use or disclosure of personal information is consistent with the purpose for which the information was collected or compiled if the use or disclosure*
>
> *(a) has a reasonable and direct connection to that purpose, and*
>
> *(b) is necessary for performing the statutory duties of, or for operating a legally authorized program of, the public body that uses or discloses the information.*

[para 88] In Order F2008-029, the Director of Adjudication discussed the meaning of "necessary" in relation to a disclosure of information for the purposes of meeting the goals of a program of the Public Body within the terms of section 41(b) of the FOIP Act. She said:

> […] I find that "necessary" does not mean "indispensable" - in other words it does not mean that the CPS could not possibly perform its duties without disclosing the information. Rather, it is sufficient to meet the test that the disclosure permits the CPS a means by which they may achieve their objectives of preserving the peace and enforcing the law that would be unavailable without it. […]
>
> […] Again, I find that "necessary" in this context does not mean "indispensable", and is satisfied as long as the disclosure is a significant means by which to help achieve the goals of the program.

[para 89] Section 41 of the FOIP Act holds that a disclosure is reasonably connected to a public body's collection of personal information if there is a reasonable and direct connection with its purpose in collecting the information *and* it is a significant means by

which a public body may meet its statutory duties or operate a legally authorized program.

The disclosure to the employer

[para 90] The Public Body provided the following background regarding its decision to obtain an IME report:

> August 2016 to October 2016: [the Complainant] attended modified work as recommended by [the psychologist] and continued to see [the psychologist] on a weekly basis.
>
> January 2017: [The Complainant] was cleared for reintegration to facilitate a return to his pre-accident patrol duties by [another] registered psychologist. The claim owner requested that [the psychologist] monitor [the Complainant's] progress with the reintegration.
>
> February 2017: An update from [the psychologist] indicated that sessions with [the psychologist] continued bi-weekly. She continued to monitor [the Complainant's] anxiety and other reactions to reintegration, maintain his gains, and work on the issues underlying his ongoing struggle with sleep, numbness and anger.
>
> October 2017: [the Complainant's] sessions with [the psychologist] were decreased to monthly visits.
>
> October to December 2017: It had been a year since a Comprehensive Psychological Assessment (CPA) was completed with [the Complainant] by [another psychiatrist]. Based on this and [the psychologist's] belief that the work restrictions would be permanent, the claim owner determined that a Psychiatric IME was needed to confirm the permanency of [the Complainant's] work restrictions and whether he had plateaued with treatment.
>
> December 4, 2017: [the Complainant attended the Psychological IME with [the psychiatrist who authored the IME report] […]
>
> [The psychiatrist's] IME report confirmed that [the Complainant] was still having some PTSD symptoms and there were still work restrictions arising from the PTSD.

[para 91] According to the background provided by the Public Body, the Complainant's psychologist had indicated he was not able to return to date of accident duties and continued to see him monthly, while a psychologist retained by his employer had cleared the Complainant to return to his pre-accident duties. The Complainant was performing modified duties offered by his employer. The Public Body determined an IME was required to determine whether the Complainant's disability continued and, if so, whether he had permanent work restrictions. Under section 38 of the WCA, the Public Body may require a worker to attend a medical examination for the purpose of determining the worker's entitlement to compensation.

[para 92] The Public Body asserts its purpose in obtaining the IME report was the following:

> The IME was requested in order to confirm [the Complainant's] current status, determine whether his work restrictions were permanent and to gather an opinion regarding ongoing investigations, treatments or consultations relating to the work injury. This was needed in order to ensure that [the

> Complainant's] treatment team, including his case manager and his medical providers were able to make appropriate decisions regarding his treatment plan and his return to work plan while considering current information and a specialist's opinion.

[para 93] The evidence supports finding that the Public Body obtained the IME report in order to better understand the Complainant's current status, medical needs, work restrictions and prognosis, as that is borne out by the questions asked of the psychiatrist who conducted the IME. In addition, obtaining the IME report was consistent with the Public Body's responsibility to determine all matters relating to compensation for an injured worker, including determining whether to continue to make medical treatment available. The case manager, acting on behalf of the Public Body, had to determine whether the Public Body accepted the Complainant had work restrictions, whether the work restrictions were related to the injury for which the claim had been accepted, and whether the Complainant continued to be entitled to compensation, including medical treatment. The Public Body required the IME report as a means to obtain objective evidence on which to base its decisions.

[para 94] The Public Body argues that section 40(1)(c) authorizes the disclosure of the IME report and the consultant's memo as the employer requested clarification regarding the Complainant's work restrictions:

> The record was requested by the employer as it provided information regarding [the Complainant's] status and work restrictions, at that time, The Case Manager noted the report was forwarded for the purposes of discussing and identifying suitable modified work positions and also to ensure [the Complainant's] outcome focused goals were maintained. The disclosure was authorized under section 35 of the WCA, therefore, sections 40(1)(e) and (f) of the FOIP Act permit the disclosure, in this case.
>
> Section 40(1)(c) of the FOIP Act also permits the WCB to disclose personal information. In this case, the employer requested clarification on permanent work restrictions in order to better determine whether they would be able to accommodate the worker in a permanent position with the [Complainant's employer]. It is essential for employers to stay apprised of relevant factors surrounding the claim based on their obligation to work with the WCB and health care providers in developing an effective return to work plan for the injured worker. The memo was disclosed to the employer for the purpose of providing them with the information they required to continue to facilitate [the Complainant's] modified employment.

[para 95] I have already found that section 35 of the WCA, to which the Public Body refers, does not authorize providing an IME report or a medical consultant's memo to an employer. The employer completed a form the Public Body has created in order for employers to request access to records. Had the employer not requested the records, it appears that the Public Body would not have provided them. I note, too, that the medical consultant's memo indicates that it was created to assist the case manager to make decisions under the WCA, as opposed to the employer.

[para 96] I agree with the Public Body that it is necessary for an employer to understand a worker's work restrictions and to understand why the Public Body accepts that a worker has work restrictions. In order to provide modified duties to accommodate an employee's restrictions, an employer must know what a worker's restrictions are. It

may be for this reason that section 35 of the WCA authorizes the Public Body to provide an employer with progress reports, while section 44 of the WCA authorizes it to provide summaries of reasons for its decisions to an employer and to include medical reasons in its summaries of reasons.

[para 97] An employer does not necessarily rely on the Public Body for the information it requires regarding an employee's disability. An employer has obligations to an employee under collective agreement or contract, and under human rights legislation, even if the employee does not have a workers' compensation claim. It is clear that the employer in this case also had the ability to require the Complainant to undergo an IME to assist it to evaluate the Complainant's work restrictions. It is not the case, then, that the only source of information regarding the Complainant's work restrictions was the Public Body.

[para 98] A police service, such as the Complainant's employer must ensure that its own criteria are met before returning an employee to pre-accident employment and must also ensure that it is complying with any obligations under a collective agreement or human rights legislation before it returns a police officer to pre-accident duties. An IME report or consultant's memo intended to assist the Public Body to determine eligibility for compensation would not necessarily assist the Complainant's employer to make a determination as to whether the Complainant could perform his pre-accident duties as a police officer.

[para 99] Assuming that there is a reasonable and direct relation between the Public Body's purpose in obtaining the IME report and its decision to disclose the IME report to the employer, it is not enough for the purpose in disclosing personal information and the purpose in collecting it to have a reasonable and direct connection to meet the requirements of section 41 of the FOIP Act. Cited above, section 41(b) of the FOIP Act also requires that the disclosure be necessary for performing the statutory duties of, or for operating a legally authorized program of, the public body that uses or discloses the information.

[para 100] I am unable to find that the terms of section 41(b) are met in relation to the disclosure of the IME report to the employer. I say this because the WCA does not authorize or contemplate that the Public Body will provide records such as an IME report or medical consultant's memo to an employer in any circumstances outside a review or an appeal under section 147(4) of the WCA. Section 147(5) prohibits an employer from using reports received from the Public Body for purposes other than participating in an appeal or review.

[para 101] As noted above, section 35 of the WCA allows the Public Body to provide a report of progress to an employer. Section 44 of the WCA permits it to provide a summary of reasons, including medical reasons, for a decision, on request. Had the Public Body provided a report of progress, or a summary of reasons for a decision that communicated the Complainant's work restrictions, then I would be able to find that disclosing information about work restrictions to assist the employer to accommodate

them was a significant means by which the Public Body could meet its statutory duties or operate a legally authorized program. I say this because sections 35 and 44 of the WCA set out statutory duties for the Public Body to follow in administering the WCA. Again, neither of these include providing an IME report or a medical consultant's memo to an employer. If it were the case that the WCA imposed greater information sharing duties on the Public Body and also empowered employers to use the Public Body's records for the purposes of offering modified duties I would agree that the terms of section 41(b) are met. In contrast, section 147(5) of the WCA *prohibits* an employer from using the Public Body's records for purposes other than participating in an appeal or review under the WCA. Section 147(4) of the WCA is the *only* provision in the WCA that contemplates providing an employer with its records and so the prohibition in section 147(5) applies to the records received by the Complainant's employer in this case. To put the point differently, the WCA bars an employer from using the Public Body's records for the purposes of planning an employee's return to work. As a consequence, section 40(1)(c) of the FOIP Act does not authorize disclosure of the kind that is the subject of the complaint, even though the disclosure may relate in a general way to the Public Body's purpose in obtaining the IME report.

[para 102] For all the foregoing reasons, I find that the requirements of section 41 are not met as the disclosure to the employer in the circumstances was not a means by which the Public Body could meet its statutory duties or operate a program, given the restrictions on disclosing its records in the WCA. As a result, I find that section 40(1)(c) does not authorize the disclosure to the employer.

Disclosure to the general practitioner and the psychologist

[para 103] The Public Body states:

> The IME was requested in order to confirm [the Complainant's] current status, determine whether his work restrictions were permanent and to gather an opinion regarding ongoing investigations, treatments or consultations relating to the work injury. This was needed in order to ensure that [the Complainant's] treatment team, including his case manager and his medical providers were able to make appropriate decisions regarding his treatment plan and his return to work plan while considering current information and a specialist's opinion.

[para 104] The Public Body indicates it obtained the IME report to determine the Complainant's current status and whether any further treatment or consultation was required. Doing so was intended to enable the case manager to make decisions regarding the Complainant's entitlement to compensation, including whether further medical compensation should be offered. Given the questions the Public Body posed to the psychiatrist who conducted the IME, and given the Public Body's role in providing compensation, I find that the Public Body also obtained the IME to determine whether there were any other forms of treatment or consultation that could benefit the Complainant, in addition to determining whether he continued to have work restrictions.

[para 105] The Public Body also asserts that it obtained the IME report in order to enable the Complainant's medical providers to "make appropriate decisions

regarding his treatment plan and his return-to-work plan". It reasons that disclosing the IME report to the general practitioner and the psychologist was done for a purpose consistent with the Public Body's purpose in obtaining the report as it provided the opinion to them so that they could make decisions.

[para 106] It is unclear to me, in this case, that the Complainant intended to seek the treatment recommended in the IME report, or that he would seek it from the psychologist or the general practitioner. While the Public Body speaks of the Complainant's "treatment team" as including the Public Body and medical services providers, it is the patient – the Complainant in this case -- who determines the treatment that will be received. The Public Body determines what medical treatment it will fund and to what extent. It is the Complainant who decides what medical treatment he will undergo, not the Public Body.

[para 107] The IME report was disclosed to the general practitioner and the psychologist without consulting the Complainant as to whether he was interested in obtaining the treatment to which the IME report refers or whether he wished to discuss the content of the IME report with the psychologist and the general practitioner.

[para 108] In this case, it is unclear what decisions the psychologist and the general practitioner would make, or how the IME report would assist them, as the Public Body has not explained what decisions it anticipated the psychologist and the general practitioner could make without first consulting the Complainant and obtaining his consent. It is also unclear why the entire IME report would assist the general practitioner and the psychologist in making any such decisions.

[para 109] The Public Body's role does not make it responsible for directing the worker's care outside a claim or otherwise make the worker a "ward" of the Public Body for the purposes of making medical decisions. The Public Body must ensure appropriate treatment is available to the worker, and it has an interest in the progress of that treatment, but it does not, itself, treat or make medical decisions on behalf of a worker.

[para 110] In this case, there is no indication that the psychologist needed the IME report in connection with the Public Body's statutory roles such as assisting to return the Complainant work or providing treatment for compensable conditions. The Public Body asserts only that providing the IME report to the psychologist gave her "necessary information to inform her ongoing sessions with [the Complainant]." The Public Body does not explain how the information in the complete IME report was reasonably necessary for treating the compensable condition. If the Public Body means that it provided the report so that the psychologist could monitor for the potential for the development of the condition referenced in the second line of the concluding paragraph of the IME report, it is unclear how doing so relates to the Public Body's purpose in obtaining the report. The recommendation that the psychologist monitor the potential for a condition to develop that might or might not be related to the compensable PTSD and does not obviously relate to the Complainant's claim for compensation or his employment. It is a suggestion for future care in the event the Complainant should develop a condition. While it is possible that there is a reasonable link between the Public

Body's statutory role and its action of providing the IME report to the psychologist for her use in treating the Complainant, the Public Body has not explained with sufficient detail and evidence what that link is for me to find that section 40(1)(c) authorizes the disclosure.

[para 111] With regard to the disclosure to the general practitioner, the same holds true. The Public Body has not adequately explained how supplying the IME report, or pieces of information in the report, reasonably related to its statutory purposes of obtaining the IME report. There is a recommendation in the IME report regarding a potential medication, but at the time of the Public Body's disclosure, the Public Body did not know whether the Complainant was interested in taking the medication or whether he would seek the treatment discussed in the IME report from the general practitioner. The Public Body does not explain why it was of the view that the general practitioner needed to see the complete IME report or had decisions to make regarding its contents.

[para 112] The Public Body has not addressed whether the psychologist and the general practitioner were authorized under the *Personal Information Protection Act* (in the case of the psychologist) or the *Health Information Act* (in the case of the general practitioner) to collect or use the information provided by the Public Body. It is possible that these professionals had the Complainant's consent to collect information about the Complainant, but on the evidence before me, I do not know that to have been the case. Regardless of what the Public Body's intentions were in disclosing the IME report to the psychologist and the general practitioner, if they lacked the authority to collect and use the Complainant's personal or health information, the Public Body's purposes in providing the information to them would not be served.

[para 113] As the terms of section 41 of the FOIP Act are not met regarding the disclosures, I find that section 40(1)(c) of the FOIP Act does not authorize the disclosure to the general practitioner or the psychologist.

The Public Body's Arguments in Relation to College of Physicians and Surgeons Policy

[para 114] The Public Body also argues that a standard of the College of Physicians and Surgeons of Alberta either authorizes or supports the disclosure of the IME report to the treating physicians.

> Transfer of Care — College of Physicians and Surgeons of Alberta (CPSA) Standard
>
> In speaking with the WCB Medical Services area, they provided the following:
>
> Transfer of care from one physician to another is an important process, and significantly improves the care provided to (in this case) an injured worker. That communication between physicians is so important that there is a CPSA Standard which states the following:
>
> 1. A regulated member transferring full or partial responsibility for a patient's care to another healthcare provider(s) must:
>
> > a. communicate clearly with the accepting healthcare provider(s) and provide a timely, written summary that includes the following information:

> i. identification of the roles and responsibilities of the regulated member and other healthcare providers involved in the patient's ongoing care;
> ii pertinent clinical information, including outstanding test results and active consultations;
> iii. treatment plans and recommendations for follow-up care;
>
> This standard provides the medical basis for the communication between the IME physician and the treating physician; the phrasing of "must" in this standard emphasizes the importance of this process. This communication is especially important in cases where assessments are performed, as the IME physician assessment will be in greater detail than the treating physician will be able to provide in their clinical practice.

[para 115] The Public Body argues that its disclosure of the IME Report to the Complainant's general practitioner and the psychologist aligns with the foregoing standard. The standard the Public Body cited relates to transfer of care by regulated members of the College. It is unclear that the provision of the IME Report to the general practitioner and the psychologist by the Public Body could be construed as a "transfer of care". Rather, it is a disclosure of personal information by the Public Body within the terms of the FOIP Act. The Public Body is not a regulated member of the College. Moreover, as noted previously, the consent form stated that the psychiatrist who conducted the IME would not provide treatment.

[para 116] Even if the disclosures were demonstrated to align with standards of the College of Physicians and Surgeons of Alberta, this would not mean that the disclosures were authorized under section 40(1) of the FOIP Act. Section 40(1) of the FOIP Act does not authorize disclosure in accordance with the standards of the College of Physicians and Surgeons of Alberta.

Section 40(1)(b)

[para 117] Cited above, section 40(1)(b) authorizes a public body to disclose personal information when it would not be an invasion of an individual's personal privacy to do so. The Public Body argues:

> In relation to section 40(1)(b), it is submitted that pursuant to section 17(2)(c) of the FOIP Act, disclosing [the Complainant's] personal information in this instance did not constitute an unreasonable invasion of his personal privacy. Section 17(2)(c) states:
>
> > 17(2) A disclosure of personal information is not an unreasonable invasion of a third party's personal privacy if
> >
> > (c) an Act of Alberta or Canada authorizes or requires the disclosure.

[para 118] Section 17 of the FOIP Act establishes the circumstances in which it is, or is not, an unreasonable invasion of personal privacy for a public body to disclose personal information. This provision states, in part:

17(1) The head of a public body must refuse to disclose personal information to an applicant if the disclosure would be an unreasonable invasion of a third party's personal privacy.

(2) A disclosure of personal information is not an unreasonable invasion of a third party's personal privacy if

> *(a) the third party has, in the prescribed manner, consented to or requested the disclosure,*
>
> *[...]*
>
> *(c) an Act of Alberta or Canada authorizes or requires the disclosure [...]*

[...]

(4) A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if

> *(a) the personal information relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation [...]*

(5) In determining under subsections (1) and (4) whether a disclosure of personal information constitutes an unreasonable invasion of a third party's personal privacy, the head of a public body must consider all the relevant circumstances, including whether

> *(a) the disclosure is desirable for the purpose of subjecting the activities of the Government of Alberta or a public body to public scrutiny,*
>
> *(b) the disclosure is likely to promote public health and safety or the protection of the environment,*
>
> *(c) the personal information is relevant to a fair determination of the applicant's rights,*
>
> *(d) the disclosure will assist in researching or validating the claims, disputes or grievances of aboriginal people,*
>
> *(e) the third party will be exposed unfairly to financial or other harm,*
>
> *(f) the personal information has been supplied in confidence,*
>
> *(g) the personal information is likely to be inaccurate or unreliable,*

(h) the disclosure may unfairly damage the reputation of any person referred to in the record requested by the applicant, and

(i) the personal information was originally provided by the applicant.

[para 119] Section 17(1) of the FOIP Act requires a public body to withhold information once all relevant interests in disclosing and withholding information have been weighed under section 17(5) and the conclusion is reached that it would be an unreasonable invasion of the personal privacy of a third party to disclose his or her personal information. However, if there are no interests weighing in favor of disclosure, the presumption under section 17(4) is not rebutted, and the information must be withheld under section 17(1).

[para 120] Once the decision is made that a presumption set out in section 17(4) applies to information, it is necessary to consider all relevant factors under section 17(5) to determine whether it would, or would not, be an unreasonable invasion of a third party's personal privacy to disclose the information.

[para 121] The Public Body's argument that it was not an unreasonable invasion of the Complainant's personal privacy to disclose the IME report and the medical consultant's summary to his employer turns on its view that provisions of the WCA authorized the disclosure. When a statute of Alberta or Canada authorizes disclosure, section 17(2)(c) of the FOIP Act deems the disclosure not to be an unreasonable invasion of personal privacy. A public body can then rely on section 40(1)(b) for its disclosure of the information.

[para 122] I have found above, in my discussion of sections 40(1)(e) and (f), that the disclosures that are the subject of the complaint were not authorized or required by a statute or enactment. As a result, I find that section 17(2)(c) does not apply. I have also found that the Public Body lacked the Complainant's consent within the terms of the FOIP Act to disclose his personal information in the IME report and the consultant's memo.

[para 123] Cited above, section 17(4)(a) creates a presumption that it would be an unreasonable invasion of personal privacy to disclose an individual's health information. As I find that section 17(2) does not apply, but that the presumption created by section 17(4)(a) does apply, I will determine whether the presumption has been rebutted.

[para 124] Based on the evidence before me, I am unable to identify any factors set out in section 17(5) of the FOIP Act that both apply and weigh in favor of disclosure of the IME report and the medical consultant's memo to the Complainant's employer or to the treating physicians. As a result, I find that the presumption against disclosure is not outweighed and that it would be an unreasonable invasion of the Complainant's personal privacy to disclose the information in the IME report and the medical consultant's memo to the Complainant's employer and the general practitioner and the psychologist.

Conclusion under section 40(1) of the FOIP] Act

[para 125] I am unable to identify a provision of section 40(1) of the FOIP Act that would serve to authorize the disclosure of the IME report or the consultant's summary to the Complainant's employer or the IME report to the general practitioner and the psychologist in the circumstances of this case.

Section 40(4) of the FOIP Act

[para 126] Cited above, section 40(4) of the FOIP Act restricts a public body to disclosing only the personal information necessary for meeting its purposes in disclosing the information.

[para 127] The Public Body argues:

> Section 40(4) states that a public body may disclose personal information only to the extent necessary to enable the public body to carry out the purposes described in subsections (1), (2) and (3) in a reasonable manner. In the case of the disclosure noted above, only those records necessary for their purposes were provided.
>
> […]
>
> In addition to this, the report was disclosed to [the psychologist] based on the Case Manager's understanding that the signed Acknowledgment/Consent form was a valid consent providing authorization to disclose the report to his treating physicians including [the psychologist]. Section 40(1)(d) permits a public body to disclose personal information only if the individual the information is about has identified the information and consented, in the prescribed manner, to the disclosure. That clearly occurred in this case.

[para 128] I find that the Public Body has not established that it disclosed only the personal information reasonably necessary for meeting its purposes in disclosing the information. The Public Body apparently disclosed the entire IME report on the basis of the consent form; however, a public body is required to consider section 40(4) and its purposes in disclosing personal information before disclosing personal information even though it believes an individual has consented to the disclosure.

[para 129] While the Public Body has provided reasons for its disclosure of personal information, and it appears that the disclosure of that personal information served some of its purposes in disclosing the information, there is a great deal of information in the IME report and the medical consultant's memo that the Public Body disclosed, but did not speak to in its submissions. The Public Body could have met its purposes in disclosing the Complainant's personal information by disclosing substantially less information, such as by disclosing the information it is authorized to provide under sections 35 and 44 of the WCA. I note too that the Public Body informed the Complainant on June 27, 2019 that it had not followed its normal practice regarding the handling of psychiatric reporting and disclosed more information from the IME report than its normal practice contemplated.

Conclusion

[para 130] As I find that the disclosures that are the subject of the complaint contravened provisions of Part 2 of the FOIP Act, I must order the Public Body to cease disclosing the Complainant's personal information in situations where it lacks authority to do so under the FOIP Act.

III. ORDER

[para 131] I make this Order under section 72 of the Act.

[para 132] I order the Public Body to comply with the terms of Part 2 of the FOIP Act when it handles the Complainant's personal information in the future.

_____

Teresa Cunningham
Adjudicator
/kh

[i] Ruth Sullivan, *Sullivan and Driedger on the Construction of Statutes 4th Edition*, (Markham; Butterworths, 2002) pp. 261- 262
[ii] *Ibid*., p. 357